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Opinion Committee

SJS

Honorable Dan Morales
Texas Attorney General
Administration Office
P.O. Box 12548
Austin, Texas 78711

Re: Opinion request regarding payment of burial expenses for children in the custody of the Texas Department of Protective & Regulatory Services

Dear Attorney General Morales,

I respectfully request that you issue an opinion in answer to the following question:

Does the Texas Department of Protective & Regulatory Services (PRS) bear legal and financial responsibility for the burial expenses of children for whom PRS has been named the permanent managing conservator after all parental rights have been terminated?

It is important to answer this question since Bexar County has assumed the responsibility for such burials after PRS has declined to act. However, an examination of applicable law lends support for the proposition that the costs of such expenses should be borne by the state agency.

The disposition of remains and the duty to inter are addressed in Texas Health & Safety Code § 711.002, which states, in pertinent part:

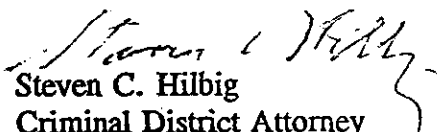
- a. Unless a decedent has left other directions for the disposition of the decedent's remains, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the person's remains, shall inter the remains, and are liable for the reasonable cost of interment:
1. the decedent's surviving spouse;
 2. the decedent's surviving adult children;
 3. the decedent's surviving parents;
 4. the decedent's surviving adult siblings; or
 5. the adult person in the next degree of kinship in the order named by law to inherit the estate of the deceased.

The appointment of a managing conservator for a minor under Texas Family Code § 14.01 does not by itself terminate the parental relationship. However, if parental rights are terminated, the managing conservator has the "power to make any other decision concerning the child that a parent could make." Texas Family Code § 14.02(a)(8) (Vernon 1986).

Since the termination of parental rights gives the managing conservator the power to make the decisions that a parent can make, and the decision regarding disposition of remains is the right of a parent, it would appear that in those instances where PRS has terminated parental rights and assumed the role of the parent, PRS has the right to control the disposition of the remains of its wards. That right is concomitant with the duty to inter and the liability for costs; accordingly, it would appear that PRS is responsible for the burial of children who die while in its managing conservatorship.

Alternatively, one could argue that the rights and duties of a conservator are statutorily prescribed in Family Code §14.02. Therefore, the failure of the Legislature to include in that Family Code Section a "catch all" provision assigning a conservator any other duties a parent would have indicates the intent of the Legislature to limit the conservator's duties to those expressly identified therein. See State v. Jones, 570 S.W.2d 122 (Tex. Civ. App. - Austin 1978, no writ)(intent may be inferred from absence of statutory provision).

Sincerely,


Steven C. Hilbig
Criminal District Attorney
Bexar County, Texas

SCH:clj